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October 18, 2019

Honorable Sandra J. Feuerstein
United States District Court for the
Eastern District of New York
100 Federal Plaza
Courtroom 1010
Central Islip, NY 11722

VIA ECF

Re: *Matkal v. VG Rush/Priceless/Savewize* (2:18-02833-SJF-AKT)

Dear Judge Feuerstein:

We represent Defendant and Third-Party Plaintiff VG Rush Corp. (“VG Rush”) in this action. VG Rush submits this letter in light of the Court’s October 17, 2019 Order dismissing Plaintiff Matkal LLC’s complaint against VG Rush with prejudice and directing the Clerk of the Court to close this case. (Dkt. No. 62.)

VG Rush is concerned that the Court’s direction to the Clerk of the Court to close the case is inconsistent with the procedural posture of the matter. This is because, while Matkal has now dismissed its claims against VG Rush with prejudice, VG Rush still has pending third-party claims for indemnification and breach of warranty pending against Third-Party Defendants Priceless Resource Inc. (“Priceless”) and DASP Group LLC d/b/a Savewize Premium Closeouts (“Savewize”). (See Third-Party Complaint (“Dkt. No. 10”).) VG Rush’s claims against Priceless and Savewize remain live, ripe, and in dispute.

Independent subject matter jurisdiction exists for VG Rush’s third-party claims. VG Rush is a California corporation with a principal place of business in Northridge, California. (See *id.* at ¶ 6.) Priceless is a New York corporation with its principal place of business in Brooklyn. (See *id.* at ¶ 7; Priceless Answer (Dkt. No. 49) at ¶ 7.) Savewize is a New Jersey limited liability company with its principal place of business in Lakewood, New Jersey. (See Dkt. No. 10 at ¶ 8; Savewize Answer (Dkt. No. 37) at ¶ 8.) There is thus

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complete diversity over VG Rush's third-party claims and, given the fees that VG Rush has incurred to date, there is more than \$75,000 in dispute.

Further, while Matkal's original claim against VG Rush initially gave rise to federal subject matter jurisdiction in this case, the Court has discretion to retain supplemental jurisdiction over VG Rush's third-party claims. See 28 U.S.C. § 1367(c)(3); *Ametex Fabrics v. Just in Materials, Inc.*, 140 F.3d 101, 105-06 (2d Cir. 1998) (affirming district court's decision to retain supplemental jurisdiction over third-party action after dismissal of original claim).

At the May 30, 2019 Status Conference, the Court directed Matkal and VG Rush to complete discovery by July 30, 2019, and temporarily stayed discovery with respect to VG Rush's third-party claims against Priceless and Savewize. Now that Matkal and VG Rush have resolved their dispute, the time has come to move forward on VG Rush's third-party claims. To the extent it is useful for the Court, VG Rush would be happy to appear at a Status Conference to discuss a schedule for resolution of its third-party claims. There is currently a conference set for January 22, 2020, but VG Rush would be amenable to advancing the date of that conference. VG Rush expects this part of the case to move quickly. The facts are undisputed, the law regarding indemnification and U.C.C. warranties is clear, and little discovery is needed.

For all of the above reasons, VG Rush asks the Court to vacate or clarify its October 17, 2019 direction to the Clerk of the Court to close this case.

Respectfully Submitted,

/s/ Marc J. Pernick

Marc J. Pernick

cc: Counsel via ECF